

HOUSE BILL REPORT

E2SHB 2501

As Passed House:
February 14, 2012

Title: An act relating to mandatory overtime for employees of health care facilities.

Brief Description: Placing restrictions on mandatory overtime for employees of health care facilities.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Green, Cody, Jinkins, Ryu, Lytton, Sells, Reykdal, Kirby, Van De Wege, Moeller, Darneille, Miloscia, Santos and Roberts).

Brief History:

Committee Activity:

Labor & Workforce Development: 1/24/12, 1/27/12 [DPS];

General Government Appropriations & Oversight: 2/2/12 [DP2S(w/o sub LWD)].

Floor Activity:

Passed House: 2/14/12, 57-41.

Brief Summary of Engrossed Second Substitute Bill

- Extends the prohibition on mandatory overtime in certain types of health care facilities to additional employees.
- Modifies exceptions to the prohibition on mandatory overtime related to prescheduled on-call time and completion of patient care procedures.
- Exempts critical access hospitals from the prohibition on mandatory overtime.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Alexa Silver (786-7190).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workforce Development. Signed by 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Moscoso, Vice Chair; Blake, Fitzgibbon, Ladenburg, Pedersen and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern and Wilcox.

Staff: Alex MacBain (786-7288).

Background:

Both federal and state minimum wage laws establish requirements related to overtime work. These laws require that covered employees receive overtime pay for hours worked over 40 hours per week. With some exceptions, these wage laws do not prohibit an employer from requiring employees to work overtime.

One exception prohibits covered health care facilities from requiring overtime for registered nurses and licensed practical nurses who are involved in direct patient care and are paid an hourly wage. Health care facilities covered by this prohibition on mandatory overtime are hospitals, hospices, rural health care facilities, psychiatric hospitals, some nursing homes, and facilities owned or operated by prisons and jails that provide health care services to inmates in the custody of the Department of Corrections. In the context of this prohibition, overtime means work in excess of an agreed upon, regularly scheduled shift of not more than 12 hours in a 24-hour period or 80 hours in a 14-day period.

The prohibition on mandatory overtime does not apply to overtime work that occurs:

- because of an unforeseeable emergency or disaster;
- because of prescheduled on-call time;
- when the employer documents reasonable efforts to obtain staffing; or
- when an employee must work overtime to complete a patient care procedure already in progress where the employee's absence would have an adverse effect on the patient.

The state may designate hospitals as critical access hospitals in accordance with criteria provided in federal law. Critical access hospitals are located in rural areas and have no more than 25 acute beds. Washington currently has 38 hospitals certified as critical access hospitals.

Summary of Engrossed Second Substitute Bill:

The prohibition on mandatory overtime in health care facilities applies to surgical technologists, diagnostic radiologic technologists, cardiovascular invasive specialists,

respiratory technicians, and certified nursing assistants. The prohibition applies to employees who are covered by a collective bargaining agreement in addition to those who receive an hourly wage.

The health care facilities covered by the prohibition on mandatory overtime do not include critical access hospitals. For health care facilities owned and operated by prisons and jails, the requirement that the facility provide care "to inmates" in state custody is deleted.

The exceptions to the prohibition on mandatory overtime are modified. The exception for prescheduled on-call time applies only if the prescheduled on-call time is necessary for immediate and unanticipated patient care emergencies. The employer may not use prescheduled on-call time to fill chronic or foreseeable staff shortages. Employers also may not schedule non-emergency procedures that would require overtime.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workforce Development):

(In support) This bill is important for the safety of patients and workers. It would extend protections to technicians and certified nursing assistants that are already offered to nurses. It is critical that all members of the patient care team get the rest and care they need to give patients the best care. More errors and injuries happen during long shifts. These employees should be rested as they inject dyes, assist surgeries, and administer medications. Mandatory overtime should not be used as a tool to fix chronic short staffing; it should only be used in emergency cases.

(Opposed) Hospitals need flexibility to provide quality patient care. Certain units need the ability to work 24 hours a day, seven days a week. Some staff members only work on call, and part-time nurses frequently take on-call time from full-time staff who do not want it. A nurse who takes on-call time may take a sick day the next day. This bill will worsen patient safety, because if care for non-emergent patients is delayed because appropriate staff people are not available, the patients may go to emergency status. On-call staff works well, because the patient population is unpredictable. Rural hospitals, in particular, rely on on-call time to function, since the number of patients fluctuates and is unpredictable.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) Prescheduled on-call time was originally used only for emergencies, but now it is also used for voluntary procedures scheduled by doctors. Prescheduled on-call time after a regular shift can lead to shifts as long as 33 or 36 hours without breaks. This leads to exhaustion, which increases the likelihood of mistakes and the risks to patient safety. It also causes high turnover, which is expensive for hospitals.

(Opposed) The underlying law applies only to nurses who receive an hourly wage, but the bill expands application of the law to collective bargaining agreements. This will create a significant fiscal impact for the University of Washington, which has salaried employees who would be covered by the bill. The change to prescheduled on-call time will have a significant impact on public hospital districts. Employees sign up generally one month in advance for their on-call shifts. Limiting the use of prescheduled on-call time will force small hospitals to hire more people.

Persons Testifying (Labor & Workforce Development): (In support) Erin Adamson and Sharon Ness, United Food and Commercial Workers Local 21; and John Tweedy, Washington State Nurses Association.

(Opposed) Patrice Tynes, Vanessa Kahle, and Todd Strumwasser, Swedish Hospital; and Brenda West, Mark Reed Hospital.

Persons Testifying (General Government Appropriations & Oversight): (In support) Ellie Mensies, Service Employees International Union Healthcare 1199NW; and Sofia Aragon, Washington State Nurses Association.

(Opposed) Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Labor & Workforce Development):
None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.